

AMENDED IN SENATE JUNE 14, 2016

AMENDED IN SENATE MAY 19, 2016

AMENDED IN ASSEMBLY JANUARY 25, 2016

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN ASSEMBLY JUNE 2, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 67

Introduced by Assembly Member Gonzalez
(Coauthors: Assembly Members Calderon, Chu, and McCarty)
(Coauthor: Senator Allen)

December 17, 2014

An act to add Section 511.5 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 67, as amended, Gonzalez. Double Pay on the Holiday Act of 2016.

Existing law provides that 8 hours of labor constitutes a day's work. Under existing law, any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek, and the first 8 hours worked on the 7th day of work in any one workweek, is required to be compensated at the rate of no less than 1 ½ times the regular rate of pay for an employee. Existing law also provides that hours worked in excess of 12 hours in one day as well as hours worked in excess of 8 hours on any 7th day of work are to be compensated at the rate of no

less than twice the regular rate of pay of an employee. A violation of these overtime wage provisions constitutes a crime.

This bill would enact the Double Pay on the Holiday Act of 2016, which would require an employer to pay at least 2 times the regular rate of pay to employees at retail and grocery store establishments, as defined, except employees in specified categories, for work on a family holiday, as defined. The bill would exempt ~~restaurants, except for restaurants~~ *retail food facilities, as defined, from the act unless the retail food facility is a grocery store establishment, or is located within a retail establishment, or is located within a grocery store establishment, from the act. establishment and primarily sells food for onsite consumption.*

Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 511.5 is added to the Labor Code, to
- 2 read:
- 3 511.5. (a) This section shall be known, and may be cited, as
- 4 the Double Pay on the Holiday Act of 2016.
- 5 (b) Any work performed at a retail store establishment or a
- 6 grocery store establishment on a family holiday shall be
- 7 compensated by the employer at no less than twice the employee's
- 8 regular rate of pay.
- 9 (c) The provisions of this section are in addition to and
- 10 independent of any other rights, remedies, or procedures available
- 11 under any other law to an aggrieved employee.
- 12 (d) *This section does not apply to a retail food facility unless it*
- 13 *is a grocery store establishment, or is located within a retail store*
- 14 *establishment, or is located within a grocery store establishment*
- 15 *and primarily sells food for onsite consumption.*
- 16 ~~(d)~~

1 (e) As used in this section:

2 (1) “Employee” does not include the following:

3 (A) An employee covered by a valid collective bargaining
4 agreement if the agreement expressly provides for the wages, hours
5 of work, and working conditions of employees, and expressly
6 provides for holiday premium pay for those employees, premium
7 wage rates for all overtime hours worked, and a regular hourly
8 rate of pay of not less than 30 percent more than the state minimum
9 wage.

10 (B) An employee who is exempt from the payment of an
11 overtime rate of compensation for executive, administrative, and
12 professional employees pursuant to wage orders issued by the
13 Industrial Welfare Commission described in Section 515.

14 (C) An employee who is employed by an employer who employs
15 500 or fewer employees.

16 (2) “Employer” means any person ~~employing another under~~
17 ~~any arrangement or contract of hire and includes the state, political~~
18 ~~subdivisions of the state, and municipalities.~~ *who employs another*
19 *under any arrangement or contract of hire for a retail store*
20 *establishment or grocery store establishment.*

21 (3) “Retail store establishment” means a physical store within
22 the state with more than 50 percent of its revenue generated from
23 merchandise subject to the state’s sales and use taxes, including,
24 but not limited to, electronics, appliances, clothing, furniture,
25 sporting goods, health and personal ~~products, or a limited line of~~
26 ~~food products for onsite consumption.~~ *products. A “retail store*
27 *establishment” includes a retail food facility, if the retail food*
28 *facility is located within a retail store establishment. A “retail*
29 *store establishment” does not include a retail store establishment*
30 *located in a hotel, an amusement park, or hotel, movie theater, or*
31 *a new motor vehicle dealer, as defined in Section 426 of the*
32 *Vehicle Code. Code, or a ski resort.*

33 (4) “Grocery store establishment” means a physical store within
34 the state that sells primarily household foodstuffs for offsite
35 consumption, including, but not limited to, the sale of fresh
36 produce, meats, poultry, fish, deli products, dairy products, canned
37 foods, dry foods, beverages, and baked or prepared foods. Other
38 household supplies or products are secondary to the primary
39 purpose of food sales. *A “grocery store establishment” includes*
40 *a separate retail food facility that is located within a grocery store*

1 *establishment and primarily sells food for onsite consumption. A*
2 *“grocery store establishment” does not include a store that occupies*
3 *5,000 square feet or less of floor space and that sells transportation*
4 *fuels in conjunction with, and at the same physical location as,*
5 *household foodstuffs for offsite consumption.*

6 (5) “Family holiday” means the fourth Thursday of November
7 of each year.

8 ~~(e) This section shall not apply to restaurants, except for~~
9 ~~restaurants that are located within a retail store establishment or a~~
10 ~~grocery store establishment.~~

11 (6) “Retail food facility” has the same meaning as in Section
12 113789 of the Health and Safety Code.

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.